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Letter dated 28 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Nepal, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 28 December 2001 from the Permanent Mission of Nepal to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Kingdom of Nepal to the United Nations presents its compliments to the Counter-Terrorism Committee established under Security Council resolution 1373 (2001) of 28 September 2001 and has the honour to enclose herewith an initial report pursuant to paragraph 6 of the resolution (see enclosure).

Enclosure

Key Measures Taken by His Majesty's Government of Nepal to Combat Terrorism

General Provisions

Nepal strongly condemns terrorism in all its forms and manifestations. Since Nepal itself is suffering from terrorist activities, controlling and combating terrorism has been one of the top priorities of His Majesty's Government of Nepal. Pursuant to this, the Government has already enacted various laws, become party to 6 international anti-terrorism conventions and signed a seventh convention. The Government has promulgated an ordinance specifically to combat the scourge of terrorism in view of the country's domestic problem of terrorism as well Security Council resolution 1373 (2001). The Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001) is under consideration to be tabled for approval in Parliament's next session. Measures are also being contemplated to strengthen other related legal provisions as well as to join the remaining international anti-terrorism conventions.

The Constitution of the Kingdom of Nepal-2047 (1990) makes some provisions that are relevant to dealing with the problem of terrorism. Broadly speaking, any action undertaken with the objective of undermining the sovereignty and integrity and peace and order of the Kingdom of Nepal, or instigating violence is considered as an act of terrorism. The Constitution, under Part 3, Article 12 and Sub-article 2 provides for some restrictions on the enjoyment of freedoms of opinion and expression, to form unions and associations, to movement, etc., to contain terrorist activities. Similarly, the National Civil Code (Muluki Ain), the Public Security Act 2046 (1989), Some Public (Crime and Punishment) Act 2027(1970), Local Administration Act 2028 (1971), the Immigration Act 2049 (1992), Explosive Substances Act 2018 (1961), Spy Act 2018 (1961) and Arms and Ammunition Act 2019 (1962) are some other laws which can be invoked to address specific terrorist activities.

Key Provisions of the Ordinance

The Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001) has identified the following activities as terrorist activities:

- Any act or plan of using any kinds of arms, grenades or explosives, or any other equipment or goods with the objective of affecting or hurting sovereignty or the security and law and order of the Kingdom of Nepal or any part thereof or the property of the Nepalese diplomatic missions abroad thereby causing damage to property at any place or any act causing loss of life or dismemberment or injury or setting fire or hurting physically and mentally, or any act of poisoning goods of daily consumption causing loss of life or injury, or any other aforesaid acts thereby causing panic among the people in motion or assembled;
- Acts of intimidation or terrorizing individuals at any place or in any vehicle or abducting them or creating terror among them by threatening to abduct them from vehicles and places or abduction of people traveling on such vehicles as well as activities like taking the life of others, causing physical mutilation, injury and harm or causing other types of damage by using substances mentioned in the relevant section in that connection or by threatening to use such substances or any other substances other than those mentioned in that section or threatening to use them, or, acts like the production, distribution, accumulation, peddling, import and export, marketing or possession or installation of any kind of arms and ammunition or bombs or explosive substances or poisonous substances or any assistance in this connection;
- Acts of gathering people or giving training for this purpose;
- Any other acts aimed at creating and spreading fear and terror in public life;

- Acts such as extortion of cash or kind or looting of property for this purpose, forcibly raising cash or kind or looting property in pursuit of the said purpose;
- Any attempt or conspiracy to engage in terrorist or disruptive activity, or to encourage of force anyone to take up such activity, gathering more than one individual for such purpose, constituting any group to the same end, or assigning anyone to such activity or participating in such activity with or without pay or engaging in publicity for such activity, causing obstruction to government communications system, or giving refuse to any individual engaged in terrorist or disruptive activity, or hiding any person doing any of this things.

The following provisions have been made in the new Ordinance to address terrorist activities:

1. Anyone indulging in crime in Nepal while residing abroad will also be subject to punishment.
2. The government can declare a terrorist affected area or terrorist individuals.
3. House arrest can be used to prevent any terrorist and disruptive act.
4. Cases will be heard in a court constituted or designated by His Majesty's Government.
5. Arrangements will be made for reasonable expenses for treatment and compensation in case of the maiming or death of security personnel or police assigned to control or investigate terrorist and disruptive activities.
6. Cases instituted under this ordinance will not be subject to any statute of limitations.
7. Individuals arresting or helping in the arrest of any terrorist will be suitably awarded.

With regard to executive action, all security agencies of His Majesty's Government of Nepal primarily the local administration, military, police, armed police and intelligence agencies have been mobilised to combat terrorism in a coordinated manner. His Majesty's Government of Nepal, in accordance with the Constitution of the Kingdom of Nepal, has also imposed a State of Emergency nationwide to curb domestic terrorism.

The security at national and international airports has been tightened and high priority has been given to control the movement of terrorists through international borders. His Majesty's Government of Nepal is committed not to give safe haven to any terrorist group or individual inside Nepal and is also committed to work together with the international community in fighting terrorism.

Regional/International Commitment

Nepal is working with South Asian countries at regional level in controlling and combating terrorism. Nepal is party to the SAARC Regional Convention on Suppression of Terrorism- 1987. The Convention, inter alia, provides the regional mechanism for extradition of terrorists and the exchange of information on terrorist activities.

At the international level, Nepal has become party to the following international anti-terrorism conventions:

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 1963
- Convention for Suppression of Unlawful Seizure of Aircraft, 1970
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971
- Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents, 1973
- Convention against the Taking of Hostages, 1979
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

In addition, Nepal has also signed the International Convention for the Suppression of Terrorist Bombings, 1997 and is actively considering to join the remaining international anti-terrorism instruments.

Response to the queries of the Counter-Terrorism Committee under Security Council Resolution 1373 (2001)[1]

Operative Paragraph 1

Sub-paragraph (a) – What measures if any have been taken on to prevent and suppress the financing of terrorist acts in addition to these listed in your responses to questions on 1 (b) to (d)?

Sub-paragraph (b) – What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

- The Terrorism and Disruptive Activities Control and Punishment Ordinance provides that 'acts such as extortion of cash or in kind or looting of property for this purpose (the purpose of terrorist activities), forcibly raising cash and kind or looting in pursuit of the said purpose' is an act of terrorism. The Ordinance provides for the punishment of up to life imprisonment for such activities.

Sub-paragraph (c) – What legislations and procedures exist in freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

- The Terrorism and Disruptive Activities Control and Punishment Ordinance has made provisions for 'seizing all the property (movable and immovable) of the person who commits crimes under this act'.

Sub-paragraph (d) – What measures exist to prohibit the activities listed in this sub-paragraph?

- See the response to question (b) above.

Operative Paragraph 2

Sub-paragraph (a) – What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

- There are several legal provisions in the laws of Nepal to prohibit the recruitment of members of terrorist groups and to prevent the supply of weapons to terrorist.

The Sections 3, 4 and 5 of the 'Arms and Ammunition Act 2019' strictly prohibit the production, possession and sale of any kind of weapons (including any kind of machine gun, artillery gun and mortar, rifle, pistol, revolver, mining and grenade, fog signal, fuse, gun powder, detonator, cartridge and other weapons as defined by the act) without license. Similarly, no one is entitled to buy such weapons without license within the country or outside the country under the provision of section 1 and 3 of the same act. Any person who commits such crime may face 7 years of imprisonment and financial penalty.

The Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001) clearly defines 'any acts like the production, distribution, accumulation, peddling, import and export, marketing or possession or installation of any kind of arms and ammunition or bombs or explosive substances or poisonous substances or any assistance in this connection, aimed at creating and spreading fear and terror in public life' as an act of terrorism. The ordinance also prohibits the recruitment to terrorist groups. Those who commit such crimes under the Ordinance are subject to severe punishment (up to life imprisonment).

[1] Note: The responses are based on the unofficial translation of the text of Nepalese laws most of which are not available in English.

Sub-paragraph (b) – What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning measures exists to allow exchange of information with other states?

- All the security agencies of His Majesty's Government of Nepal such as the Royal Nepalese Army, Nepal Police, the Bureau of Secret Service of Nepal and other relating to the Security have been put in high alert and have been working in a well coordinating way to fight terrorism. Similarly, the security of the national and international airports and international border has been tightened. Mechanisms to share information among security agencies within the country, with countries in the region and beyond are in place.

Sub-paragraph (c) – What legislation or procedures exist for denying safe heaven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if states supplied examples of any relevant action taken.

- The Immigration Act of Nepal provides that any foreign national who commits crimes in accordance to the existing laws of Nepal is subject to punishment. And, such foreign national may be denied permission to enter, and reside in, the country. Most of the existing laws in Nepal relating to terrorism and drug and psychotropic substances including recently issued Ordinance are applicable to anyone, irrespective of their nationality. Both committing crime in Nepal and indulging in crime in Nepal while residing abroad are subject to punishment. The provisions of the Extradition Act also apply in relevant cases.

Sub-paragraph (d) and (e)

What legislation or procedures exist to prevent terrorist acting from your territory against other state or citizens? It would be helpful if states supplied examples of any relevant action taken.

What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such acts? Please supply examples of any convictions obtained and the sentences given.

- Financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts are considered as serious crimes and carry the same gravity as other terrorist activities do. The Ordinance defines 'the act of gathering and giving training for the purpose of creating and spreading fear and terror in public life; Act- such as extortion of cash or kind or looting property in pursuit of the said purpose; any attempt or conspiracy to engage in terrorist or disruptive activity or to encourage or force anyone to take up such activity, gathering more than one individual for such purpose, constituting any group to the same end, or assigning anyone to such activity or participating in such activity with or without pay or engaging in publicity for such activity or giving refuge to any individual engaged in terrorist or disruptive activity, or hiding any person doing any of these things' as an act of terrorism. The Ordinance provides the sentence of up to life imprisonment for such crimes.

Sub-paragraph (f) – What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

- Nepal is closely working with other countries in combating terrorism, through sharing information and intelligence about terrorist activities and by not providing safe heavens to terrorists. Section 4 of the Extradition Act of Nepal 2020 (1963) provides that 'in case any person having committed an offense within the territory of a foreign country, has absconded and is hiding within the Kingdom of Nepal and a treaty exists with such foreign country for the extradition of an accused or offender of such offense, and such foreign country requests His Majesty's Government for the extradition or punishment of such accused or offender, His Majesty's Government may ask the concerned court to initiate proceedings required by law'.

Sub-paragraph (g)

How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery?

- In view of recently increased terrorist activities at home and abroad, security on Nepal's borders and in national and international airports has been stepped up. Indian nationals have to produce valid identity papers to prove their nationality. All other foreign nationals require passports, visas or other proper travel documents to enter into and reside in the country. In accordance with the provision of Immigration Act, government can deny to issue such documents to those involved in criminal activities. To forge a document is a serious, punishable crime in Nepal and Nepal is trying its best to prevent the forgery of documents despite limited financial and technical resources.

Operative Paragraph 3

Sub-paragraph (a) – What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

- Nepal works in close and regular collaboration with the INTERPOL with regard to the exchange of operational information on actions or movements of terrorists or their networks; forged or falsified travel documents; traffic in arms; explosives or sensitive materials; and the use of communication technologies by terrorist groups under the network of activities.

Sub-paragraph (b) and (c) – What steps have been taken to exchange information and cooperation in areas indicated in this sub-paragraph?

What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

- Nepal has been closely working with neighboring countries in connection with the exchange of information on terrorist activities. As a member of South Asian Association for Regional Cooperation (SAARC), Nepal is a party to SAARC Regional Convention on Suppression of Terrorism, 1988. Article VII (2) of the Convention provides that 'Contracting States shall cooperate among themselves, to the extent permitted by their national laws, through consultations between appropriate agencies, exchange of information, intelligence and expertise and such other co-operative measures as may be appropriate, with a view to prevent terroristic activities through precautionary measures'.

Sub-paragraph (d) and (e) – What are your Government's intentions regarding the signing and/or ratifying the conventions and protocols referred to in this sub-paragraph? Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Nepal is a party to the following terrorist conventions:

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 1963
- Convention for the Suppression of Unlawful Seizure of Aircraft-1970
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973
- Convention against the Taking of Hostages, 1979
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

Nepal has signed International Convention for the Suppression of Terrorist Bombings- 1997 and is actively considering becoming party to all other international anti-terrorist conventions, including International Convention

for the Suppression of the Financing of Terrorism 1999. As mentioned above, Nepal is also party to the SAARC Regional Convention on Suppression of Terrorism-1988.

Most of the provisions of these conventions have been already incorporated in domestic laws of Nepal. Especially, the recently issued Ordinance covers wide range of concerns expressed in those conventions.

Sub-paragraph (f) – What legislation procedures and mechanism are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

- There is a verification mechanism to ascertain that asylum seekers have not been involved in terrorist activities. For instance, the refugees from Bhutan in Nepal are verified before they are allowed entry in Nepal. Any terrorist activity against Nepal or any other country from Nepal is punishable under the Ordinance.

Sub-paragraph (g) – What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures, which prevent of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

- It has been a principled policy of Nepal not to let anyone use its soil against any country. Refugees or any other foreign nationals are not allowed to engage in any political activity while in Nepal. The only major condition to extradite a criminal is to have an extradition treaty with the requesting country.

- The provisions made in the SAARC Regional Convention on the Suppression of Terrorism are as follows:

Article I

Subject to the overall requirements of the law of extradition, conduct constituting any of the following offences, according to the law of the Contracting State, shall be regarded as terroristic and for the purpose of extradition shall not be regarded as a political offence or as an offence connected with a political offence or as offence inspired by political motives:

(a.) An offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

(b.) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(c.) An offence within the scope of the Convention on the Protection and Punishment of Crimes against International Protected Persons, including Diplomatic Agents, signed in new York on December 14, 1973;

(d.) An offence within the scope of any Convention to which the SAARC member States concerned are parties and which obliges the parties to prosecute or grant extradition;

(e.) Murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons ore serious damage to property;

(f.) An attempt or conspiracy to commit an offence described in subparagraphs (a) to (e), aiding, abetting or counseling the commission of such an offence or participating as an accomplice in the offences so described.

Article II

For the purpose of extradition between the SAARC member States, and two or more Contracting States may, by agreement, decide to include any other serious offence involving violence, which shall not be regarded as a political offence or an offence connected with a political offence or an offence inspired by political motives.